# In the Supreme Court of the United States

OCTOBER TERM, 1969

No. 945

CLAUDE S. GOSSETT, KATHERINE MAY GOSSETT, CHARLES D. WILLIAMS AND BONNIE WILLIAMS, PETITIONERS

*v.*

UNITED STATES OF AMERICA

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT*

## BRIEF FOR THE UNITED STATES IN OPPOSITION

### OPINION BELOW

The opinion of the court of appeals (Pet. App. 1–9) is not yet reported.

### JURISDICTION

The judgment of the court of appeals was entered on September 11, 1969. Mr. Justice Douglas extended the time within which a petition for a writ of certiorari might be filed to December 20, and the petition was filed December 12. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).



373-488—70

## QUESTION PRESENTED

Whether, considering the respective title claims to land advanced by the United States and petitioners, the district court correctly awarded a judgment of ejectment in favor of the government.

## STATEMENT

The United States instituted this action to eject petitioners from lands located on the California side of the Colorado River at a point where that river forms the boundary between California and Arizona. This is of course within the territory acquired from Mexico in 1848 by the Treaty of Guadalupe Hidalgo, 9 Stat. 922. The lands in question have never been patented out by the United States and were withdrawn from public entry in 1929 and 1931. Thus, title presumptively remains in the United States. It may be that the lands inured to California upon its admission to the Union in 1850 as part of the then bed of the navigable Colorado, but the State disclaims any interest and, at all events, title may have reverted to the United States when the lands became exposed in 1935 after the completion of Hoover Dam. On the other hand, petitioners' ownership claims are based upon deeds from a stranger to the title, executed in 1952 and 1957.

Both the district court and the court of appeals concluded that, because original title had been in the United States and the petitioners could claim only

through the United States or California and did neither,[1] the government was entitled to the relief requested. The court of appeals relied particularly on the 1963 amendment to Rule 56(e), F.R.Civ.P., as requiring defendants in this posture to put forward concrete allegations from which a material factual dispute would emerge to avoid summary judgment.

## ARGUMENT

The decision of the court of appeals is correct and presents no conflict between circuits or other question warranting review by this Court. It is undisputed that the United States was the original owner of the lands in question and that no patents embracing them have been issued. The only source of a claim would be the State of California if the lands were in the bed of the Colorado River. Yet it is undisputed that the lands are not now part of the bed of the river and have not been since 1935 when the Hoover Dam was completed; moreover, the State of California has maintained throughout that title is in the United States. In the circumstances, the courts below correctly concluded that, under Rule 56(e), F.R.Civ. P., and *Greenleaf's Lessee* v. *Birth,* 6 Pet. 302, 312, the United States was entitled to judgment.

[1] On the appeal, petitioners did argue that they might have acquired title by adverse possession from the State, but the court rejected the argument.

## CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
*Solicitor General.*
SHIRO KASHIWA,
*Assistant Attorney General.*
S. BILLINGSLEY HILL,
EDMUND B. CLARK,
*Attorneys.*

JANUARY 1970.

U.S. GOVERNMENT PRINTING OFFICE: 1970